IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2416 OF 1999

M/s.Lubricare Pvt.Ltd. & Others .. Petitioners.

V/s.

Union of India & Others .. Respondents.

Mr.M.G. Gokhale with Mr.A.R. Patil for the petitioners.

Mr.A.S. Rao i/b. H.D. Rathod for respondent Nos.1 to 3.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 17TH MARCH, 2005.

P.C. :

1. Heard the learned counsel for the parties. The sole contention sought to be raised is whether or not the Customs, Excise, Gold (Control) Appellate Tribunal was justified in accepting the contention of the respondent/department that each of the seven noticee units were not eligible for small scale exemption.

2. The factual matrix reveal that out of seven manufacturing units, five are limited companies; whereas remaining two are partnership firms. The learned counsel for the petitioners urged that Circular No.6/82 dated May 29, 1992, issued during

the pendency of this petition clarifies that a limited company should be treated as a separate entity for the purposes of working out exemption provided by Notification No.175/86 dated March 1, 1986. Since this circular has direct bearing on the impugned order, the same be set aside and the matter be remitted back to the Tribunal for adjudication afresh.

3. The learned counsel for the respondent/ department agreed that the matter be remanded back to the adjudicating authority for adjudication afresh with similar direction as were given by the Apex Court in the case of Supreme Washers Pvt. Ltd. V/s. Commissioner of Central Excise, Pune [2003 (1) SCC 142]. However, findings of the Tribunal with respect to two petitioners, namely partnership firms should be confirmed. Before dealing with the contention of respondent/department, let us first consider the observations of the Supreme Court made in para (6) of the said judgment. The observations and findings recorded are as under :

> " In regard to the second contention of the appellant in Civil Appeal No.6161 of 1999, it is seen from the circular dated 1-3-1956, which according to the appellants has been reiterated by another subsequent Circular No.6/82 dated 29-5-1952 by the Central Board of Customs and Excise, New Delhi that a limited company should be treated as a separate entity for the purpose

> of exemption limit. If that be the position in law, then there may be some justification for the appellant to urge, so far as M/s.Supreme Washers (P) Ltd. is concerned, it being a limited company, its production cannot be clubbed with the other units. However, since this aspect of the case and applicability of the circulars referred hereinabove was not brought to the notice of the Tribunal, we are in agreement with the suggestion made by the learned Attorney-General that it will be just and proper to remand this matter, for this limited purpose, to the Tribunal for examining the applicability of the circular relied upon by the appellant M/s.Supreme Washers (P) Ltd."

Following the aforesaid observations, findings of the Tribunal with respect to five limited companies, who are petitioners herein; cannot be sustained. If that be so, we have no option but to set aside the impugned order with respect to the five manufacturing units which are limited companies. So far as other two partnership firms, who are also petitioners herein are concerned, the findings with respect thereto are interlinked with the findings of other five petitioners. They can neither be separated nor can be read separately. Hence, the entire impugned order needs to be set aside.

2. Keeping in view and following the judgment of the Supreme Court in the case of Supreme Washers (P) Ltd.,(supra) we set aside the impugned order and remand the matter back to the Tribunal for examining the applicability of the circular relied upon by the

petitioners bearing No.6/92 dated September 25, 1992 issued by the Central Board of Customs & Excise, New Delhi. It is needless to mention that in view of the Circular No.6/92 entire matter will have to be considered afresh by the Tribunal in accordance with law following principles of natural justice.

4. In the above view of the matter, the petition stands allowed by keeping all rival contentions of the parties open. Rule is made absolute in terms of this order with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)